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**IT IS SO ORDERED.**



*Beth A. Buchanan*

Beth A. Buchanan  
United States Bankruptcy Judge

**Dated: September 27, 2011**

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**In Re**

**RICHARD MARTIN  
TONYA MARTIN**

**Debtors**

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**Case No. 10-10721  
Chapter 7  
Judge Buchanan**

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**ORDER APPROVING REAFFIRMATION AGREEMENTS**

This case is before this Court regarding the following reaffirmation agreements (collectively, the “Reaffirmation Agreements”):

- Reaffirmation Agreement between the Debtors and EMC Mortgage Corporation for the debt secured by the real property located at 413 Kings Mills Rd., Mason, Ohio [Docket Numbers 57, 58, 59];
- Reaffirmation Agreement between the Debtors and Litton Loan Servicing, L.P. for the debt secured by the real property located at 483 Knollcrest Dr., Lebanon, Ohio [Docket Number 60];
- Reaffirmation Agreements between the Debtors and First Financial Bank, N.A. for the debt secured by the real property at located 849 Roundhill Ct., Lebanon, Ohio<sup>1</sup> [Docket

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<sup>1</sup> This reaffirmation agreement does not specify the collateral the loan secures, but based on the Debtors’ schedules it appears to be a third mortgage on the property at 849 Roundhill Rd., Lebanon.

Numbers 63, 64], for the debt secured by the properties located at 1040 DePaul Dr., Fairfield, Ohio, 849 Roundhill Ct., Lebanon, Ohio, and 1032 Stratford Place, Mason, Ohio [Docket Numbers 65, 66], for the debt secured by the real property located at 741 Charlton Ct., Hamilton, Ohio [Docket Numbers 67, 68], for the debt secured by the real property located at 110 Factory Rd., Springboro, Ohio [Docket Numbers 69, 70], and for the debt secured by the real property located at 360 Martha Dr., Franklin, Ohio [Docket Numbers 71, 72].

A hearing on approval of the Reaffirmation Agreements was held on July 14, 2011. Both Debtors and their attorney were present at the hearing as well as counsel for First Financial Bank.<sup>2</sup>

The Debtors wish to reaffirm multiple mortgages in the aggregate amount of approximately \$685,600 on eight residential rental properties that the Debtors own personally. Although each Reaffirmation Agreement indicates that the Debtors were represented by an attorney during the course of negotiating the Reaffirmation Agreements, their attorney declined to execute the certification in support of the Reaffirmation Agreements. Because the Debtors' attorney fulfilled her professional duty to represent the Debtors in negotiating the Reaffirmation Agreements but ultimately elected not to make the required certification, the Debtors may seek this Court's approval of the Reaffirmation Agreement in the same manner the Debtors could have sought this Court's approval if the Debtors were not represented by an attorney during the course of negotiating the Reaffirmation Agreements. *See In re Goodman*, 2009 WL 936910 (Bankr. N.D. Ga. 2009).

To approve the Reaffirmation Agreements, this Court must find that the Reaffirmation Agreements are in the best interest of the Debtors and do not impose an undue hardship on the Debtors' or their dependents.<sup>3</sup> *See* 11 U.S.C. §524(d). The "best interest of the debtor" determination focuses primarily on whether entering into a reaffirmation agreement is financially or economically beneficial to the debtor. *See In re Hirte*, 71 B.R. 249, 250 (Bankr. D. Or. 1986). The court is given the flexibility to consider the particular circumstances of each case in making this decision. *In re Law*, 421 B.R. 735, 737 (Bankr. W.D. Pa. 2010). In doing so, the court may look to a variety of factors, including: (i) whether the debtor voluntarily entered into the reaffirmation agreement; (ii) whether the debtor was fully informed of the contents of the agreement; (iii) whether the reaffirmed debt is secured or unsecured; (iv) the amount of equity in the collateral; (v) the likelihood of repossession of the collateral if the debt is not reaffirmed; (vi) the extent to which the collateral is a necessity; (vii) the debtor's payment history; and, (viii) what alternatives, other than reaffirmation, are available to the debtor. *See BankBoston, N.A. v. Claflin (In re Claflin)*, 249 B.R. 840, 847 (B.A.P. 1st Cir. 2000); *In re Kamps*, 217 B.R. 836, 847-55 (Bankr. C.D. Cal. 1998).

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<sup>2</sup> Debtors' attorney was present at the hearing to provide background and context relating to the negotiation of the reaffirmation agreements but did not advocate for or against approval of the reaffirmation agreements on behalf of the Debtors.

<sup>3</sup> While the debt that the Debtors seek to reaffirm is secured by real property, the debt is not consumer debt as defined by Section 101(8) of the Bankruptcy Code. Accordingly, this Court must still make the best interest and lack of undue hardships findings required by Section 524(c)(6) of the Bankruptcy Code.

In contrast to the best interest of the debtor inquiry, the undue hardship test is a relatively straight forward mathematical question comparing the debtor's income versus the debtor's expenses. *See In re Law*, 421 B.R. at 737; *In re Kamps*, 217 B.R. at 846; *see also*, 11 U.S.C. §524(m) (identifying when a presumption of an undue hardship arises). Courts may also consider additional sources of funds that are available to enable the debtor to make the payments on the reaffirmed debt. *See* 11 U.S.C. §524(m).

This Court makes the following findings of fact and conclusions of law based on the information provided in the Reaffirmation Agreements, the Debtors' statements at the hearing and the supplemental *Statement In Support of Reaffirmation Agreements* [Docket Number 77] filed by the Debtors following the hearing.

Mr. Martin is employed in sales with International Business Machine Corp. Ms. Martin is a stay at home mother to the Martins' four children. In addition, Ms. Martin oversees and manages the Debtors' rental properties.

Almost 10 years ago, the Debtors began investing in single-family residential real estate to provide for their retirement and their children's college education. Due to the condition and location of the rental properties, the vacancy rate for the rental properties was less than five percent (5%) per year and the properties were self sufficient. The Debtors' rental business progressed well until 2005 when the Debtors' made an ill-advised investment in a 34-unit apartment building. Significant on-going maintenance costs required to maintain the Section 8 Housing Choice Vouchers for the property resulted in the Debtors selling the apartment building to an investor with more experience with the Section 8 housing program. The Debtors, however, remained liable on the mortgage for the apartment building together with the investor since the investor was not able to obtain sufficient financing to fully pay-off the underlying mortgage. The investor subsequently filed bankruptcy and the lender, First Financial Bank as successor in interest to Peoples Community Bank, foreclosed on the apartment building. Following the foreclosure, First Financial Bank obtained a \$1,243,922.96 judgment<sup>4</sup> against the Debtors, which was subsequently certified and attached as a lien against all of the Debtors' rental properties. As additional consideration for the Reaffirmation Agreements, First Financial Bank has agreed to release the judgment lien if the Reaffirmation Agreements are approved by this Court.

The Debtors' Schedules I and J reflect sufficient income to cover their household expenses. The Debtors provided detailed income and expense information for each of the rental properties, which shows tight but sufficient income from the rental properties to pay the required mortgage payments, taxes, insurance and related expenditures (including a monthly maintenance and vacancy reserve). The Debtors state that they have many long-term tenants, with average vacancy rates at approximately 3%. In addition, the Debtors currently rent their home and indicate that they could move into one of the rental properties if required to do so to reduce expenses.

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<sup>4</sup> First Financial Bank filed a proof of claim based on the judgment lien for \$1,436,403.59. *See* Claim Number 11.

The Debtors have limited equity in the rental properties,<sup>5</sup> however, they have remained current on all post-petition obligations relating to the properties the Debtors seek to reaffirm. The Debtors also provided projections for the principal balances of the mortgage loans over the next 25 years showing how amortization of the mortgages will provide income for both the Debtors' retirement and to fund a college education for their four children.

At the hearing, this Court informed the Debtors that the Reaffirmation Agreements were not required under the Bankruptcy Code, under non-bankruptcy law, or under any agreement not made in accordance with Section 524(c) of the Bankruptcy Code. *See* 11 U.S.C. §524(d)(1)(A). This Court further informed the Debtors of the legal effect and consequences of the Reaffirmation Agreements and of a default under the Reaffirmation Agreements. *See* 11 U.S.C. §524(d)(1)(B). It is clear to this Court from the Debtors' statements and demeanor at the hearing, together with the comprehensive and well considered supplemental financial analysis provided by the Debtors, that the Debtors are entering into these Reaffirmation Agreements voluntarily and they are fully informed as to the content and implications of the Reaffirmation Agreements. The Debtors' investment in the 34-unit apartment building caused the Debtors' financial difficulties resulting in this bankruptcy and it appears unlikely to this Court that the Debtors will venture into such risky investments in the future. While the loan to value and net cash flow for the rental properties does not provide much cushion, the overall cash flow is positive and the post-petition obligations are current.

Reaffirmation of the debts relating to the specified rental properties, in conjunction with the release of First Financial Bank's judgment lien, will give the Debtors the opportunity to make the fresh start they are seeking for themselves and their children. Based on the foregoing considerations, this Court finds that the Reaffirmation Agreements are in the best interests of the Debtors and will not impose an undue hardship on the Debtors or their dependents. Accordingly, the Reaffirmation Agreements are hereby APPROVED.

IT SO ORDERED.

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<sup>5</sup> Absent a release of First Financial Bank's \$1,243,922.96 judgment, there is no equity in any of the rental properties.